

### **REMARKS**

The Applicants appreciate the thorough examination of the present application as evidenced by the Official Action mailed July 27, 2005 (hereinafter "the Official Action"). In particular, the Applicants appreciate the Examiner's withdrawal of all rejections from the previous Office Actions. In response to the Office Action, the Applicants have amended Claims 1-3, 13-17, and 19-24; and the Applicants have added new Claims 25-30.

The Applicants will also show in the following remarks that all claims are patentable over the cited art. Accordingly, the Applicants submit that all claims are in condition for allowance as discussed in greater detail below, and a Notice Of Allowance is respectfully requested in due course.

#### **Statement Of Substance Of The Interview**

The Applicants sincerely appreciate all courtesies extended by the Examiner in the telephonic interview of October 4, 2005. In particular, the Applicants appreciate the Examiner's indication that new dependent Claim 25 overcomes the outstanding rejections. The Applicants further submit that new dependent Claims 27 and 29 overcome the outstanding rejections for the reasons that Claim 25 overcomes the outstanding rejections. Accordingly, the Applicants submit that the subject matter of Claims 25, 27, and 29 is patentable. The Applicants have not rewritten Claims 25, 27, and 29 in independent form because the Applicants will show in the following remarks that independent Claims 1, 16, and 19 are also patentable.

The Applicants believe that this response satisfies all requirements of a written statement of the reasons presented at the interview as set forth in 37 C.F.R. Sec. 1.133(b). If any additional submission from the Applicants relating to the Interview of October 4, 2005, the Applicants respectfully request that the Examiner contact the undersigned attorney at his earliest convenience.

#### **Acceptance Of New Power Of Attorney Is Respectfully Requested**

A Revocation Of Power Of Attorney And New Power Of Attorney was submitted to the U.S. Patent Office for the present application on September 8, 2005. More particularly, the law firm Myers Bigel Sibley & Sajovec, P.A. has been

appointed to transact all business in the Patent and Trademark Office in connection with the present application. A copy of the Revocation Of Power Of Attorney And New Power Of Attorney is attached hereto for the Examiner's convenience.

**Independent Claims 1, 16, And 19 Are Patentable**

Independent Claims 1, 16, and 19 have been rejected under 35 U.S.C. Sec. 102(b) as being anticipated by International PCT Patent Application No. WO 99/60790 to Ellis et al. ("Ellis"). The Applicants respectfully submit, however, that independent Claims 1, 16, and 19 are patentable for at least the reasons discussed below.

Claim 1, for example, has been amended to recite a method for content transmission network selection in a system coupled in parallel through both of a broadcast network and a broadband network to a viewer location wherein the broadcast network and the broadband network are different. More particularly, the method includes:

- identifying video programming content to be transmitted to the viewer location based on a transmission request;
- selecting one of the broadcast network or the broadband network for transmission of the video programming content to the viewer location based upon characteristics of the transmission request comprising a future time at which the video programming content is requested to be viewed, the selection based at least in part on an option of delivering the video programming content either at a time that the request is received or at the future time; and
- transmitting the video programming content on the selected one of the broadcast network or the broadband network to the viewer location coupled to both of the broadcast and broadband networks.

Ellis fails to teach or suggest network selection in a system coupled in parallel through both of a broadcast network and a broadband network to a viewer location wherein the broadcast network and the broadband network are different. Figure 2 of Ellis shows multiple television and audio channels provided to set-top boxes 34 via communications paths 32 (*see*, Ellis, page 14, lines 12-14), and Ellis also shows a communications line 28 between main facility 22 and regional television distribution facility 26 (*see*, Ellis, page 10, lines 7-19). Ellis, however, fails to teach or suggest different networks coupled in parallel to a viewer location. Accordingly, Ellis also

fails to teach or suggest selecting one of the broadcast network or the broadband network for transmission of the video programming to the viewer location.

For at least the reasons discussed above, the Applicants respectfully submit that Claim 1 is patentable over Ellis. The Applicants further submit that independent Claims 16 and 19 are patentable for reasons similar to those discussed above with regard to Claim 1. In addition, dependent Claims 2-15, 17-18, and 20-30 are patentable at least as per the patentability of Claims 1, 16, and 19 from which they depend.

**Dependent Claim 13 Is Separately Patentable**

Claim 13 has been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over Ellis in view of U.S. Patent No. 5,699,107 to Lawler et al. ("Lawler"). Claim 13, however, is patentable for at least the reasons discussed above with regard to Claim 1 from which it depends. Claim 13 is also separately patentable.

Claim 13 includes all recitations of Claims 12 and 1 from which it depends. In addition to the recitations of Claim 1 discussed above, Claim 13 recites transmitting over a broadcast network a notification of the transmission characteristics wherein the transmission characteristics comprise an identification of a transmission network. As discussed above, Ellis fails to teach or suggest a system coupled in parallel through different networks to a viewer location. Accordingly, Ellis fails to teach or suggest transmitting an identification of a transmission network because there is no need to do so.

Lawler fails to provide the missing teachings. With reference to Figure 1, Lawler discusses a system 10 having a central head end 12 that supplies programming over a network 14 to multiple viewer stations 16. *See*, col. 3, lines 61-63. Lawler, thus, also fails to teach or suggest a system coupled in parallel through different networks to a viewer location. Accordingly, Lawler fails to teach or suggest transmitting an identification of a transmission network because there is no need to do so. Moreover, there is no motivation in either Ellis or Lawler to transmit an identification of a transmission network because there is no selection between different networks.

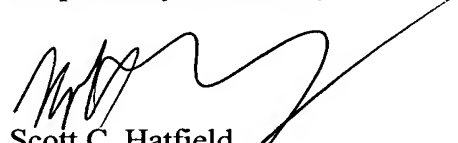
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For at least the reasons discussed above, Claim 13 is patentable over the combination of Ellis and Lawler.

### **CONCLUSION**

Accordingly, the Applicants submit that all pending claims in the present application are in condition for allowance, and allowance of all claims is respectfully requested in due course. The Examiner is encouraged to contact the undersigned attorney by telephone if any additional issues should need to be addressed.

Respectfully submitted,



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Joyce Paoli

